

Book Review

The Limits of Democratic Governance in South Africa, by Louis A. Picard and Thomas Mogale. Boulder, CO: Lynne Rienner Publishers, 2014, 277 pp., \$68.50 hardback.

Reviewed by Nico Steytler
University of the Western Cape

The title of the book by Louis A. Picard and Thomas Mogale is a bit of a misnomer. The book is not about democratic governance in South Africa in general—across the three spheres of government— but about democracy at the level of the “local state.” More specifically, the focus tends to be on the local state in rural areas, where 39 percent of the population resides. The “local state” is defined by the authors as the entire state system that functions at a local level, and thus includes the national government working in a deconcentrated form and the elected local governments proper. As the focus is on “governance” and “quasi-state actors,” as well as non-state actors, both the traditional authorities and civil society are part of the inquiry. The authors argue that the post-apartheid democratic South Africa is characterized by top-down policy making and control, which they call “prefectoralism.” This concept refers to central control as “both a set of institutions and a mindset” (p. 6). More narrowly, they also define “prefectoralism” as “appointed central authorities at the subnational level” (p. 15), the classic examples being the prefect or the district commissioner. Democratic governance would, on the other hand, entail for them a great degree of autonomy at the local level that would result in people-centred development “requiring local government structures and processes that are pluralist and participatory” (p. 13).

The current “prefectoralism,” they argue, has its origins in the preceding 300 years of colonial, Union, and apartheid rule. The prefectorial system was first introduced by the Dutch colonists in the seventeenth century through the centrally appointed magistrate (*landdrost*), a tradition that was continued in the nineteenth century by the British imperialists. After the formation of the Union of South Africa in 1910, this form of government was carried forward to its culmination in the apartheid area (1948–1990). Prefectorialism is examined primarily from the perspective of how the successive white regimes governed the black majority. The authors then argue that the post-1994 democratic era still reflects this mode of governance.

In answering the central question of the book—the limits of (rural) local democratic governance—they list as the most important limitations: “(1) the unfinished task of developing a political culture...that supports democratic governance and tolerates differences and (2) the development of a professionalised subnational public sector.”

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(p. 246) The first limitation the authors locate is the “ANC’s value system of centralized governance, which is a legacy of the armed struggle against apartheid.” (p. 246). Although the primacy of these limitations may be debated (what about the emergence of the neopatrimonial state?), the question remains: have the prefectorial institutions of the past spilled over in the present democratic South Africa reflecting a strong case of path dependency? Is the mindset of the ruling party the same as the previous colonial and white regimes? The answers are in my opinion not as straightforward as the authors suggest.

The current municipal institution that covers the entire country does show similarities with local institutions of the past, but it is the elected, financially self-sustaining, municipal government institution that was introduced at the end of nineteenth century in the Cape, and not the colonial institutions of “native administration.” Even the authors admit that South Africa’s “prefectoral structures have largely—though not completely—disappeared.” (p. 17). The changes that did occur with regard to local autonomy are not fully explored in the book.

First, a fundamental constitutional shift occurred in the 1996 Constitution that established local government as a constitutionally protected sphere of government. As early as 1997, the Constitutional Court recognized this shift; local authorities were no longer creatures of statute and under the control of the provinces, but institutions of democracy whose decisions could not be attacked on the basis of administrative law, as was previously the case. The constitutional protection of local autonomy—although limited—is real, as the number of successful court challenges against national and provincial governments’ interference attests.

Second, little evidence is proffered of the continuing “prefectoral” role of the deconcentrated central state. The argument in Chapter 10 which deals with “The Continuing Role of Traditional Authorities” reverts back to the central thesis of the “lingering prefectorialism” (p. 235), which includes the role of the magistrate as an administrator. They write, “The role of the magistrate in South Africa remains crucial and both party and government officials continue to take on a ‘tutorial’ role in relationship to lower levels of government.” (p. 235). This “top-down ‘newprefectoral’ approach to governance is [thus] an important reason why democratic governance at subnational levels is weak in South Africa.” (p. 235). There is no doubt that the African National Congress (ANC), through its hierarchical party structure and discipline plays an important role in keeping ANC-controlled municipalities in line, and provincial and national governments play a supervisory role, but the position of the magistrate has changed. The policy and practice of the Department of Justice has been to eliminate the magistrates’ administrative tasks, confining them to their judicial function. This is in line with achieving the total separation of the judiciary from the executive, as effected by the Seventeenth Constitutional Amendment of 2012. The statement that “[t]he role and status of magistrates has not been changed since 1994” (p. 237) is thus open to debate.

On the question whether the prefectorial mindset has not changed, the evidence is also more nuanced than what the authors suggest. Yes, the ANC has a strong impulse toward central control of government, they are in the business of governing. But even applying its policy of “democratic centralism,” its control over all party structures, particularly at local level, is tenuous in some respects. What is important is that control is sought within a constitutionally entrenched system of devolved government which allows for multiparty contestation for power. In addressing this conundrum, the authors equate the constitutional imprimatur of “cooperative government” as “very compatible with prefectorialism as a

mindset.” (p. 237). Although the national government has sought to use it to direct subnational governments, also evidenced in the Intergovernmental Relations Framework Act of 2005, it remains a weak formal instrument of control; the ANC, when seeking to direct ANC-control subnational governments, rather works through the party hierarchy than using this constitutional principle. In the case of the opposition-held province and municipalities, the principle has only limited legal traction.

The differences of opinion I have with their interpretation of the current state of affairs at the local state level, partly stems from the book’s research shortcomings.

First, for a book pronouncing on the state of local government at the end of President Zuma’s first term (2009–2014), there is little analysis of local government over the past ten years. A closer look at the past decade would both have supported and detracted from their argument. In Chapter 8 on “Where’s the Money? The Fiscal Debate,” there is no reference to the numerous National Treasury reports detailing transfer trends and policy shifts. Although some sources dating after 2000 are used, the impression is that the book is locked in the debates of the 1990s. In Chapter 9 on “The Special Challenges of Rural Local Governance,” the focus is mainly on the regional services councils, their origins in 1987, and their continuation in an altered form during the first democratic government (1994–1999). Not only does the chapter not deal with the challenges of local government in rural areas, but it does not look at the role of district councils which were established in 2000.

Second, the cogency of their arguments is marred by numerous small inaccuracies and bald, unnuanced statements. For example, the authors state that “[t]he 1996 Constitution guaranteed the existence of traditional authorities and allowed for autonomous third-tier bodies in which traditional leaders would be accommodated as ex-officio members of councils.” (p. 234). Not only is this statement incorrect as the 1996 Constitution only refers to the recognition of traditional leadership and a possible role “for traditional leadership as an institution at local level on matters affecting local communities” (section 212(2)) (the ex-officio accommodation is found in a 1998 statute), but the source of this piece of information is a publication dated 1995, which is well before the chapter on local government in the 1996 Constitution was written. Another example is the following statement: “In reality, postapartheid governments found it very difficult to redirect money to the rural areas because of vested interests and budget inflexibility.” (p. 238) The reference for this highly contestable statement comes from a rather dubious source—a planning officer in the Office of the Military Council, of the then “independent” Republic of Transkei, with whom the author Picard had an interview on October 1, 1990. A view on the White Paper on Local Government is attributed to the same person, although the White Paper was published eight years after the interview.

Despite these misgivings, the book is still a valuable resource. It provides a very useful analysis of the governance structures and mindset of the pre-1994 South African state over 300 years, mainly with regard to the governance of black South Africans. It also raises the critical question about the meaning of democracy and the current state of South Africa’s democracy at a local level.

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